

1 MIKE EINSTEIN,

2 Plaintiff,

3 v.

4 RADIO THERMOSTAT COMPANY OF  
5 AMERICA INC., et al.,

6 Defendants.

7 Case No. [21-cv-00300-CRB](#)

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10 **ORDER GRANTING MOTION TO  
11 DISMISS CLAIMS 4 AND 5**

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13 Plaintiff Mike Einstein is suing his former employer Defendants Radio Thermostat  
14 Company of America, Inc., Tim Simon, Inc., and Tim Simon, alleging eight claims. In  
15 Claim 4, Einstein alleges that Defendants “knowingly misclassif[ied] [its workers] as  
16 independent contractors, in violation of California Labor Code Section 226.8.” Compl.  
17 (dkt. 1) ¶ 41. In Claim 5, he seeks civil penalties, alleging that Defendants failed to furnish  
18 accurate paystubs, in violation of Labor Code § 226(a). Id. ¶¶ 44, 46–47.

19 Simon moved to dismiss these two claims. Mot. to Dismiss (dkt. 29); see Fed. R.  
20 Civ. P. 12(b)(6). Einstein does not oppose. Statement of Non-Opposition (dkt. 36).

21 The Court agrees that both claims lack “a cognizable legal theory.” Godecke v.  
22 Kinetic Concepts, Inc., 937 F.3d 1201, 1208 (9th Cir. 2019). Claim 4 fails because Labor  
23 Code § 226.8 does not create a private right of action. Noe v. Superior Court, 237 Cal.  
24 App. 4th 316, 334 (2015). Claim 5 fails because Einstein’s employment ended in 2019, so  
25 the one-year statute of limitations forecloses the recovery of civil penalties. See Compl.  
26 ¶ 23; Cal. Civ. Proc. Code § 340. Amendment of either claim would be futile. See  
27 Leadsinger, Inc. v. BMG Music Pub., 512 F.3d 522, 532 (9th Cir. 2008).

1 For the foregoing reasons, the Court dismisses Claims 4 and 5 with prejudice.  
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**IT IS SO ORDERED.**

3 Dated: October 27, 2021  
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CHARLES R. BREYER  
United States District Judge